Saiful Nizam bin Adnan v Jabatan Kerja Raya Negeri Selangor & Ors

HIGH COURT (SHAH ALAM) — SUIT NO 21NCVC-12–04 OF 2015
GUNALAN MUNIANDY JC
18 NOVEMBER 2016

Labour Law — Employment — Dispute over dismissal — Plaintiff employed as driver by first defendant — Plaintiff transferred to Jabatan Kerja Raya ('JKR') Shah Alam — Plaintiff failed to report to JKR Shah Alam — Third defendant imposed penalty of forfeiture of emolument and subsequently third defendant dismissed plaintiff — Whether plaintiff committed disciplinary offence — Whether decision of third defendant to forfeit emolument and dismiss plaintiff in accordance with procedural law and rules of natural justice — Whether plaintiff entitled to exemplary damages — Public Officers Disciplinary Regulations Selangor 1995 (Amendment) 2006 regs 26(1), 37 & 37D

The plaintiff was a member of the public service as driver grade R3 in Jabatan Kerja Raya ('JKR') in Sabak Bernam, Selangor before being transferred to JKR Cawangan Kejuruteraan Mekanikal Negeri Selangor, Shah Alam with effect from 15 June 2012. The plaintiff's applications for deferment of the transfer, firstly on 15 July 2012 and subsequently on 31 August 2012 were both allowed by the first defendant. Due to the failure of the plaintiff to report at the JKR Shah Alam even after the period of deferment, the third defendant imposed the penalty of forfeiture of emolument for the period of his absent from work and thereafter dismissal from the public service. Consequently, the plaintiff brought the present action against the defendants for the following prayers: (a) a declaration by the court to cancel the dismissal of the plaintiff; (b) a declaration by the court to cancel the plaintiff's right to emoluments; (c) a declaration from the court ordering the first defendant to reinstate the plaintiff's employment to his original post; (d) a declaration from the court ordering the first defendant to refund to the plaintiff all arrears of salaries and emoluments; (e) exemplary damages to the plaintiff; (f) cost of the present action; and (g) any other relief that was deemed fit and fair by the court. The issues for consideration were whether the plaintiff had committed a disciplinary offence; and whether the decision of the third defendant to dismiss the plaintiff from public service and to cancel his emoluments was in accordance with procedural law and the rules of natural justice.

Held, entering judgment for the plaintiff as per prayers (a), (b), (c), (d) and (f); and dismissing the claim for exemplary damages with costs:

(1) As the plaintiff did not dispute having been absent from duty without permission or reasonable cause, he had committed a disciplinary offence under reg 26(1) of the Public Officers Disciplinary Regulations Selangor 1995 (Amendment) 2006 ('the Regulations') by his own admission of the facts in relation thereto (see para 10).

(2) The issue pleaded was clearly wide enough to encompass the fundamental procedural defect alleged against the defendant, which rendered the whole action taken against the plaintiff an illegality and a nullity for not being in accordance with procedural law. The plaintiff had expressly pleaded broadly that the action taken against him and penalty imposed had infringed law and procedure, including sales of nature. Hence, the sole ground raised by him relating to the invalidity of the disciplinary board meeting could not be considered as abandoning his pleaded cause of action and totally changing his course. It was, thus, not a ground premised on an unpleaded cause of action that could be rejected in limine (see paras 26 & 28).

(3) Based on the minutes of meeting, the third defendant took less than a minute to make its decision. Hence, it was manifestly clear that the third defendant did not give any consideration to or deliberate upon the reports and evidence against the plaintiff before making its decision as provided under regs 37 and 37D of the Regulations. Thus, the third defendant's action in issuing letter dated 10 August 2014 to the plaintiff informing him that his right to emoluments had been forfeited and that he was dismissed from public service was not in accordance with law for infringing the relevant provisions of the Regulations and established rules of natural justice. The third defendant's decision was therefore invalid in law, void and a nullity (see paras 31–35).

(4) On the facts and evidence as to the conduct of the plaintiff on being absent from work without leave and without valid grounds which he himself did not dispute, the court held that he was not entitled to exemplary damages. Under the facts and circumstances of the case, the claim for aggravated damages need not be considered as the plaintiff had not satisfied any of the criteria for this type of damages to be awarded, inter alia, he had failed to set out in his statement of claim the essential particulars or the factual matrix or special facts that would justify this claim being awarded (see para 37).

[Bahasa Malaysia summary

Plaintif adalah ahli perkhidmatan awam sebagai pemandu gred R3 di dalam Jabatan Kerja Raya ('JKR') di Sabak Bernam, Selangor sebelum dipindahkan ke JKR Cawangan Kejuruteraan Mekanikal Negeri Selangor, Shah Alam berkuat kuasa dari 15 Jun 2012. Permohonan-permohonan plaintif untuk penangguhan pindah, pertamanya pada 15 Julai 2012 dan kemudiannya pada

31 Ogos 2012 dikedua-duanya dibenarkan oleh defendan pertama. Akibat kegagalan plaintif untuk melaporkan diri di JKR Shah Alam walaupun selepas tempoh penangguhan, defendan ketiga mengenakan penalti terhadap pelucuthakan emolumen bagi tempoh tidak hadir bekerja dan selepas itu pembuangan kerja daripada perkhidmatan awam. Akibatnya, plaintif membawa tindakan ini terhadap defendan untuk permohonan berikutnya: (a) perisytiharan oleh mahkamah untuk membatalkan pembuangan kerja plaintif; (b) periystiharan oleh mahkamah untuk membatalkan hak plaintif kepada emolumen; (c) periystiharan daripada mahkamah memerintah defendan pertama untuk mengembalikan pekerjaan plaintif kepada kedudukan asal; (d) periystiharan daripada mahkamah memerintah defendan pertama membayar balik kepada plaintif kesemua tunggakan gaji dan emolumen; (e) ganti rugi teladan kepada plaintif; (f) kos tindakan ini; dan (g) relif lain yang dianggap wajar dan adil oleh mahkamah. Isu-isu untuk pertimbangan adalah sama ada plaintif telah melakukan kesalahan tatatertib; dan sama ada keputusan defendan ketiga untuk membuang plaintif daripada perkhidmatan awam dan untuk membatalkan emolumen adalah mengikut undang-undang prosedur dan peraturan-peraturan keadilan semula jadi.

Diputuskan, memasukkan penghakiman untuk plaintif sebagai permohonan-permohonan (a), (b), (c), (d) dan (f); menolak tuntutan untuk ganti rugi teladan dengan kos:

(1) Memandangkan plaintif tidak mempertikaikan kerana tidak hadir bekerja tanpa kebenaran atau kausa munasabah, dia telah melakukan kesalahan tatatertib di peraturan 26(1) Peraturan-Peraturan Pegawai-Pegawai Awam (Tindakan Tatatertib) Selangor 1995 (Pindaan) 2006 ('Peraturan-Peraturan') dengan pengakuannya sendiri terhadap fakta berkaitan dengannya (lihat perenggan 10).

(2) Isu yang diplidkan adalah jelas luas cukup untuk merangkumi kecacatan prosedur asas yang didakwa terhadap defendan, yang membuatkan keseluruhan tindakan yang diambil terhadap plaintif salah di sisi undang-undang dan terbatal kerana tidak mengikut dengan undang-undang prosedur. Plaintif telah secara jelas luas memplid bahawa tindakan yang diambil terhadapnya dan penalti yang dikenakan telah melanggar undang-undang dan prosedur, termasuk *sales of nature*. Maka, satu-satunya alasan yang dibangkitkan olehnya berkaitan kepada ketaksahan mesyuarat lembaga tatatertib tidak boleh dipertimbangkan sebagai meninggalkan kausa tindakan yang diplidnya dan secara keseluruhan menukar haluannya. Oleh itu, ia bukan alasan yang didasarkan ke atas kausa tindakan yang tidak diplidkan yang boleh ditolak in limine (lihat perenggan 26 & 28).

(3) Berdasarkan minit mesyuarat, defendan ketiga mengambil masa kurang daripada satu minit untuk membuat keputusannya. Maka, ia adalah jelas

bahawa defendan ketiga tidak memberikan apa-apa pertimbangan atau mempertimbangkan ke atas laporan dan keterangan terhadap plaintif sebelum membuat keputusannya seperti yang diperuntukkan di bawah peraturan 37 dan 37D Peraturan-Peraturan. Oleh itu, tindakan defendan ketiga dalam mengeluarkan surat bertarikh 10 Ogos 2014 kepada plaintif memberitahunya bahawa haknya kepada emolumen telah dirampas dan bahawa dia telah dibuang daripada perkhidmatan awam tidak mengikut undang-undang kerana melanggar peruntukan-peruntukan relevan Peraturan-Peraturan dan peraturan-peraturan semula jadi yang ditetapkan. Keputusan defendan ketiga oleh itu adalah salah dari segi undang-undang, tak sah dan terbatal (lihat perenggan 31–35).

(4) Atas fakta dan keterangan terhadap kelakuan plaintif kerana tidak hadir bekerja tanpa kebenaran dan tanpa alasan sah yang mana dia sendiri tidak mempertikaikannya, mahkamah memutuskan bahawa dia tidak berhak kepada ganti rugi teladan. Di bawah fakta dan keadaan kes, tuntutan untuk ganti rugi teladan tidak peru dipertimbangkan kerana plaintif tidak mematuhi apa-apa kriteria bagi jenis ganti rugi ini untuk diawardkan, antara lain, dia gagal untuk menyatakan di dalam pernyataan tuntutannya butir-butir penting atau matriks fakta atau fakta khas yang akan menjustifikasikan tuntutan ini diawardkan (lihat perenggan 37).]

Notes

For cases on dispute over dismissal, see 8(1) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 1259–1260.

Cases referred to

Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor [2014] 4 MLJ 619; [2014] 2 CLJ 773, CA (refd)

Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors [2016] 7 MLJ 183; [2015] 8 CLJ 125, HC (refd)

Sumbang Projeks Sdn Bhd v Tenaga Nasional Berhad [2014] MLJU 1813; [2014] 4 CLJ 323, CA (refd)

Legislation referred to

Federal Constitution art 13

Selangor Public Officers Regulation (Disciplinary Action) 1995 regs 26(1), 37, 37(2)(a), 37D

S Saravanan (S Muthu & Co) for the plaintiff.

Nor Fariza bt Ridzuan (Assistant Legal Advisor, Selangor State Legal Advisor's Office) for the defendant.

Gunalan Muniandy JC:

[1] This claim by the plaintiff ('PW1') against the defendant ('D1, D2 and D3') is for the following relief:

(a) a declaration by the court to cancel the dismissal of the plaintiff;

(b) a declaration by the court to cancel the plaintiff's right to emoluments;

(c) a declaration from the court ordering the first defendant to reinstate the plaintiff's employment to his original post;

(d) a declaration from the court ordering the first defendant to refund to the plaintiff all arrears of salaries and emoluments;

(e) exemplary damages to the plaintiff;

(f) cost of this action; and

(g) any other relief that is deemed fit and fair by the court.

AGREED FACTS

[2] The agreed facts are as follows:

(a) the first defendant was the plaintiff's employer at the material time;

(b) the plaintiff at the material time was employed by the first defendant in JKR Sabak Bernam, Selangor as a driver grade 3; and

(c) the plaintiff was transferred from JKR Sabak Bernam to JKR Mechanical Engineering Department of Selangor, Shah Alam.

SUMMARY OF THE DEFENDANTS' CASE

(a) the plaintiff was employed as a driver grade R3 at Jabatan Kerja Raya Sabak Bernam before he was transferred to JKR Mechanical Engineering Department Negeri Selangor on 15 June 2012;

(b) the plaintiff had twice asked to defer the transfer on 15 July 2012 and 31 August 2012, and these were allowed by the JKR Selangor Head Quarters;

(c) the plaintiff failed to report duty at JKR Mechanical Engineering Department, Selangor even though the deferred date had passed;

(d) salary payments and emoluments were withheld since 1 September 2012 because the plaintiff was not at the workplace;

(e) Chairman of Disciplinary Board 'Kumpulan Sokongan' (No 2), Jabatan Kerja Raya Negeri Selangor had decided for a dismissal from employment or downgrading pursuant to reg 37 of the Selangor Public

Officers Regulation (Disciplinary Action) 1995 (Amendment) 2006; and

(f) Chairman of Disciplinary Board, Public Services Commission of Selangor, with agreement from the meeting of members had sentenced the plaintiff to cancellation of his emolument rights for the days the plaintiff was absent and dismissal from service.

ISSUES FOR DETERMINATION

(a) whether the second defendant's act for making a report on 12 June 2014 to the third defendant that the plaintiff had committed misconduct liable for a disciplinary action is reasonable and in accordance with the rules of natural justice?

(b) whether the third defendant's act via letter dated 10 August 2014 informing the plaintiff that the plaintiff's emolument rights had been dishonoured and that he was dismissed from service with immediate effect from the date of the letter was served on him is reasonable and in accordance with the principles of natural justice?

(c) whether the plaintiff has breached any regulations as a civil servant?

(d) whether the plaintiff has failed to comply with the transfer order issued? and

(e) whether the defendants' decision to dismiss the plaintiff from his position as a civil servant is valid in law?

FACTUAL BACKGROUND

[3] At the material time, PW1 was a member of the public service as driver grade R3 in the Jabatan Kerja Raya ('JKR') in Sabak Bernam, Selangor before being transferred to JKR Cawangan Kejuruteraan Mekanikal Negeri Selangor, Shah Alam with effect from 15 June 2012.

[4] DW1 then applied for deferment of the transfer twice until 15 July 2012 and 31 August 2012 respectively. Both requests for deferment were allowed by the first defendant ('D1').

[5] However, PW1 failed to report for duty at the JKR Shah Alam even after the deferment period had lapsed right until the day that the penalty of dismissal was passed against him.

[6] Action was taken to withhold PW1's salary and emoluments wef 1 September 2012 as PW1 was not at his place of work.

[7] The Chairman of the Disciplinary Board 'Kumpulan Sokongan ('No 2') of JKR Selangor recommended the penalty of dismissal against DW1 under reg 37 of the Public Officers Disciplinary Regulations Selangor 1995 (Amendment) 2006 ('the Regulations') and forwarded the recommendation to Public Services Commission, State of Selangor ('the second defendant — D2').

[8] Following the above, the chairman of D2 with the agreement of its members at the meeting of the commission imposed the penalty of forfeiture of emolument for the period that DW1 his absent from work and thereafter dismissal from the public service.

FINDING

[9] The plaintiff ('PW1') did not challenge the defendants' contention on the first issue as to whether PW1 had committed a disciplinary offence. PW1 himself admitted that after the deferment period to report for duty at the JKR Shah Alam had lapsed on 31 August 2012 he still failed to do so. He was required to report for duty there on 1 September 2012. Significantly, during that period from June–August 2012 there was no record of his attendance at JKR Sabak Bernam as well as he had, admittedly, taken away his punch cards from the custody of that office. As for JKR Shah Alam, there was no record at all of his attendance at any time after 1 September 2012.

[10] As PW1 did not dispute having been absent from duty without permission or reasonable cause, he had committed a disciplinary offence under reg 26(1) of the Regulations by his own admission of the facts in relation thereto.

[11] The focus of PW1's contention in support of his claim based on unlawful dismissal was in regard to the second issue, namely, whether D3's decision by letter dated 10 August 2014 to forfeit his emoluments and dismiss him from the public service forthwith upon service of the said letter was reasonable and in accordance with law, particularly the rules of natural justice. Issue No 4 can be conveniently dealt with together with this central issue.

[12] As pointed out by the defendants, the procedure applicable to the disciplinary case against PW1 is set out expressly in reg 26 of the Regulations and compliance with the procedural formalities governing the complaint against PW1 was not disputed.

[13] What is crucial in respect of the sole issue raised by PW1 to challenge the decision of D3 is reg 37 of the Regulations, the relevant provisions of which require D3 to apply its mind to and consider, the following as summarised by the third defendant:

(a) whether there was a prima facie case against PW1 after having considered the facts relating to the offence alleged and the grounds for the proposed dismissal or demotion in rank (reg 37(2)(a)); A

(b) a written representation submitted by PW1 containing the grounds relied upon to clear him of the charge; and B

(c) whether, after considering the representation from DW1, the representation is found to be insufficient to clear him of the charge to the satisfaction of D3.

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[14] If D3 so finds, D3 is further required to consider and decide whether to impose the penalty of dismissal or reduction in rank on PW1.

[15] At this point, it is vital to note that the above are mandatory requirements and steps that D3 must adhere to before it makes it finding on the guilt or innocence of the public servant and decides on the appropriate penalty under the circumstances. D

[16] In contending that PW1 had proved his case as pleaded and that the action taken against him was not in accordance with law and procedure, including rules of natural justice, his counsel highlighted several salient facts from the evidence given by D2's key and sole witness ('DW2') who was the then secretary of D2. DW2, who testified that he had full knowledge of this disciplinary case conceded to the following under cross-examination: E

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(a) it is mandatory under the law for a disciplinary board meeting to be held before a public servant is dismissed or deprived of his right to emoluments;

(b) if he is so dismissed or his right to emoluments withdrawn without the said meeting being held, the penalty imposed on him would be invalid; G

(c) something was amiss from the minutes of meeting of the Lembaga Tatatertib ('D3') held on 29 July 2013;

(d) the decision taken by D3 in the case of PW1 was unfair; H

(e) the meeting of D3 held in the case of PW1 was not fairly conducted and improper;

(f) from the minutes, the fate of eight public servants was determined by D2 on the same day and at the same time; and I

(g) the board meeting, based on the minutes, began at 9.30am and ended at 9.30am on the same day. As such, it would be unknown what transpired and how the fate of the eight public servants was deliberated upon and decided.

[17] DW1's counsel contended that the entire crux of this case can be determined by perusing the minutes of the board meeting held on 29 July 2013 at 9.30am. It would be useful at this point to look at the composition of the board and how the meeting purportedly proceeded and ended.

[18] Bundle C in which the minutes were enclosed were agreed and undisputed. Hence, the contents, which are indisputable, are part of the defence evidence as it is a defendants' bundle. The board comprised one Dato' Ir Abdullah bin Abd Rahman, the Director of JKR Selangor as the chairman; a secretary, an assistance administrative officer from JKR Selangor; and the Deputy Director of JKR Selangor. According to what is expressly stated in the opening page, the meeting commenced at exactly 9.30am and ended on this note:

> 3.1 Mesyuarat Lembaga Tatatertib ditangguhkan pada jam 9.30 pagi dengan ucapan terima kasih daripada Dato' Pengerusi.

[19] Preparation of the minutes was by the secretary who signed and dated it on 10 August 2013 while the checking was done by the deputy director who signed it on 14 August 2013 before the chairman approved and endorsed it on 14 August 2013. Hence, there can be no doubt that the minutes must have been correctly recorded with little room for error which, however, was not ever suggested.

[20] What was discussed and deliberated on the charges against the eight persons named, including DW1, and their representation is not recorded and is unknown. The inescapable conclusion is that nothing was discussed or considered by the board considering that the important meeting commenced at 9.30am and ended on the same minute according to the defendants own documentary evidence. In all probability, no discussion took place on nor any consideration given to the reports and representations in respect of all the eight public servants involved. No independent evidence was led by the defence to counter what the minutes reflected as to the proceedings of the board. It was on this ground that it was contended on behalf of PW1 that the minutes were in all probability a mere fact and no meeting actually took place as stated.

[21] None of the two defence witnesses was present at the meeting to give direct evidence and confirm what transpired at the meeting was as recorded in the minutes to offer a reasonable explanation as to time stated for the commencement and adjournment of the meeting. DW2, the key witness for the defendants was in no position. When questioned, on the aforesaid issue of time recorded in the minutes and whether he disputed it he merely answered that at that point in time he had not began his service with the service commission ('D2').

[22] Article 13 of the Federal Constitution states that: A

> No person shall be deprived on property save in accordance with law.

[23] Lastly, in view of the undisputed facts and documents, DW1's counsel contended that the dismissal of DW1 and the cancellation of his emolument B was done in a cavalier manner that was prejudicial to him and not in accordance with the law and due process.

[24] As for the case of the defendants, the learned federal counsel ('FC') representing them submitted, inter alia, that in law the burden of proof in a C civil claim rested on the plaintiff in the first place and no onus shifts to the defendant until and unless the burden is discharged. She cited in support the Court of Appeal case of *Sumbang Projeks Sdn Bhd v Tenaga Nasional Berhad* [2014] MLJU 1813; [2014] 4 CLJ 323 where it was held:

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> It is trite law that in a civil claim the legal burden rests throughout with the plaintiff to prove its claim. Until and unless the plaintiff discharges its legal and evidentiary burden of proving its claim, the burden does not shift to the defendant to prove its defence, no matter how weak the defence might be (see: *Selvaduray v Chinniah* [1939] MLJ 253; [1939] 1 LNS 107, CA, *UN Pandey v Hotel Marco Polo Pte Ltd* [1980] 1 MLJ 4; [1978] 1 LNS 223, *Sundram v Arujunan & Anor* [1994] 3 MLJ 361; [1994] 4 CLJ 300 and *Syed Mohamed bin Syed Alwi & Ors v Shariffah Badariah bt Alwi Al-Attas & Ors* [2010] 6 MLJ 422; [2009] 1 LNS 1234). E

[25] It was further contended that the allegation of PW1 on the core issue raised by his counsel was untenable as the plaintiff in his SOC had only pleaded F the action of the defendants was unreasonable, unfair and flouted law and procedure. Nowhere was it pleaded what law was breached or what procedure was not complied with before the decision by the defendants and the penalty imposed on PW1. G

[26] To my mind, the defendants' contention had no merits as the issue pleaded referred to above is clearly wide enough to encompass the fundamental procedural defect alleged against the defendant which renders the whole action taken against PW1 an illegality and a nullity for not being in accordance with H procedural law.

[27] In advancing her contention as above, the learned FC also sought to rely on the established principle pertaining to an unpleaded cause of action that the I court should not consider and referred to the Court of Appeal judgment of *Aseambankers Malaysia Bhd & Ors v Shencourt Sdn Bhd & Anor* [2014] 4 MLJ 619; [2014] 2 CLJ 773 where it was held:

> (b) Causes of action not pleaded

A [80] Confronted with the reality of the matter, the respondents abandoned all arguments pertaining to a cause of action based on good faith. However, the respondents changed their course and relied heavily on 'breach of legitimate contractual expectations'. But, unfortunately, this was not pleaded and there is no such cause of action of this nature.

B [81] In an otherwise well written judgment, the High Court judge held that the first appellant was liable for 'breach of duty of good faith' and for 'breach of fiduciary duties'. With due respect, the findings of the High Court judge were all based on causes of action that were not pleaded. On this ground alone, the appeal should be allowed. Sharma J in *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; [1971] 1 LNS 42,
C religiously spoke about pleadings in this way:

> The court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact it is not proper
D for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of a suit should be confined to the pleas on which the parties are at variance. If the parties agree to a factual position then it is hardly open to the court to come to a finding different from such agreed facts. The only purpose in
E requiring pleadings and issues is to ascertain the real difference between the parties and to narrow the area of conflict and to see just where the two sides differ.

[28] Based on this principle, it was submitted that the plaintiff was estopped
F from raising the issue of the invalidity of the disciplinary board meeting as elaborated as he did not dispute that the meeting took place. With respect, I did not find any substance in this submission as the plaintiff had expressly pleaded broadly that the action taken against him and penalty imposed had infringed law and procedure, including sales of nature. Hence, the sole ground raised by
G him through counsel cannot be considered as abandoning his pleaded cause of action and totally charging his course. It was, thus, not a ground premised on an unpleaded cause of action that could be rejected in limine.

CONCLUSION

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[29] To sum up, I would conclude on the threshold issue raised by the plaintiff as below.

[30] I have considered the evidence adduced by the plaintiff and the
I defendants, the contentions of the parties and the main issues arising for determination based on the pleadings.

[31] The central issue is whether the decision of the third defendant to dismiss the plaintiff from public service and to cancel his emoluments was in

accordance with procedural law and the rules of natural justice. In this regard, the most important fact that is beyond dispute is that the third defendant, based on the minutes of its meeting to consider the recommendation to dismiss the plaintiff and several other public servants took less than a minute to make its decision.

[32] Hence, it is manifestly clear that third defendant, as contended by the plaintiff, did not give any consideration to or deliberate upon the reports and evidence against the plaintiff before making its decision.

[33] Under the Disciplinary Regulations or *Peraturan Pegawai Awam Negeri Selangor* ('the Regulations') governing disciplinary action and procedure against public servants in Selangor it is mandatory and crucial for the disciplinary board or *lembaga tatatertib* ('the third defendant') to duly consider and deliberate upon all the relevant facts and evidence on record against public servants relating to the alleged misconduct by him before making its decision and imposing the appropriate penalty.

[34] It is abundantly clear from regs 37 and 37D of the Regulations that the disciplinary authority plays the most vital role in the disciplinary proceedings leading eventually to its decision. Based on the provisions therein it is encumbered for the DA to exercise its mind and consider all the information and reports as well as representation placed before it before making its findings at the various stages and its final decision. I need only refer to reg 37 which clearly expresses the powers and function of the DA at the conclusion of the proceeding in these terms:

> Jika, setelah menimbangkan representasi pegawai dan laporan Jawatankuasa Penyiasatan, jika ada, Pihak bertuasa Tatatertib yang berkenaan —
>
> (a) mendapati pegawai itu bersalah atas kesalahan tatatertib yang dikatakan telah dilakukan olehnya dan pegawai itu patut dibuang kerja atau diturunkan pangkat, Pihak Berkuasa Tatatertib itu hendaklah mengenakan hukuman buang kerja atau turun pangkat, sebagaimana yang difikirkan sesuai oleh Pihak Berkuasa Tatatertib itu:
>
> (b) mendapati pegawai itu bersalah atas kesalahan tatatertib yang dikatakan telah dilakukan olehnya tetapi, setelah mengambil kira dalam pertimbangan hal keadaan dalam mana kesalahan tatatertib itu telah dilakukan dan faktor peringanan yang lain, kesalahan itu tidak mewajarkan hukuman buang kerja atau turun pangkat tetapi mewajarkan pengenaan suatu hukuman yang lebih ringan, Pihak Berkuasa Tatatertib itu hendaklah mengenakan ke atas Pegawai itu mana-mana satu atau lebih hukuman selain buang kerja atau turun pangkat sebagaimana yang dinyatakan dalam peraturan 38 sebagaimana yang difikirkan sesuai oleh Pihak Berkuasa Tatatertib itu; atau

A (c) mendapati pegawai itu tidak bersalah, Pihak Berkuasa Tatatertib itu hendaklah membebaskannya.

[35] Therefore, the third defendant's action in issuing letter dated 10 August 2014 to the plaintiff informing him that his right to emoluments had been B forfeited and that he was dismissed from public service was not in accordance with law for infringing the relevant provisions of the Peraturan Pegawai Awam Negeri Selangor and established rules of natural justice. Hence, the impugned decision of the third defendant that is challenged in this action is therefore invalid in law and void and a nullity. C

[36] I, accordingly, entered judgment for the plaintiff against the defendants as per prayers (a), (b), (c), (d) and (f) with the usual interest on the judgment sum.

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DAMAGES

[37] On the facts and evidence as to the conduct of the plaintiff on being absent from work without leave and without valid grounds which he himself E did not dispute, I hold that he is not entitled to exemplary damages which is without any basis as prayed for in the prayer (a). I wholly agree with the learned federal counsel for the defendants that under the facts and circumstances of this case the claim for aggravated damages need not be considered as the plaintiff has not satisfied any of the criteria for this type of damages to be awarded, inter F alia, he had failed to set out in his SOC the essential particulars or the factual matrix or special facts that would justify this claim being awarded. Reference can be made to *Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors* [2016] 7 MLJ 183; [2015] 8 CLJ 125 where the High Court correctly held:

G (e) The failure to specifically claim aggravated and/or exemplary damages as a relief is not necessarily fatal. It is however desirable that it be claimed as a specific relief in the statement of claim.

(f) It is however, mandatory for a party claiming aggravated and/or exemplary damages to set out the requisite particulars or the factual matrix or the special facts H in the statement of claim to support a claim for aggravated and/or exemplary damages. This would include but is not limited to the mental distress or hurt feelings suffered by the plaintiff's directors, shareholders or staff. The failure to provide the necessary particulars or the factual matrix or special facts for aggravated and/or exemplary damages is fatal. The failure to set out the impugned conduct of I the defendants' representatives in the statement of claim for purposes of exemplary damages was fatal to the claim for exemplary damages.

[38] This claim for exemplary damages is, therefore, dismissed with costs.

Judgment entered for plaintiff for prayers (a), (b), (c), (d) and (f); and claim for exemplary damages dismissed with costs.

Reported by Dzulqarnain Ab Fatar